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## **The Specificity of Presidential Systems of Government in Francophone African Countries**

**Keywords:** Francophone Africa, the system of government, presidentialism, rationalised parliamentarianism, the head of state, the prime minister

**Słowa kluczowe:** Afryka frankofońska, system rządów, prezydenccjalizm, parlamentaryzm racjonalizowany, głowa państwa, premier

### **Summary**

The paper deals with distinguishing features of presidential systems of government adopted in the current or former constitutions of some Francophone African countries, such as Benin, Djibouti, Ivory Coast or the Republic of Congo. Particular attention has been devoted to the internal structure of the executive branch of government (the existence of the prime minister as a separate body) as well as to the reception of diverse mechanisms of rationalised parliamentarianism created previously in the constitution of the French Fifth Republic. The dynamics of constitutional changes leading to the adoption of presidentialism in place of semi-presidentialism and vice versa in such countries as Niger or Senegal has also been taken into account. In the light of the findings, it can be stated that the specific properties of presidentialism in Francophone Africa prove its apparent distinctness from certain typical assumptions of this model.

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**Streszczenie****Specyfika prezydenckich systemów rządu  
we francuskojęzycznych państwach afrykańskich**

Artykuł omawia wyróżniające cechy prezydenckich systemów rządów przyjmowanych w obowiązujących lub wcześniejszych konstytucjach niektórych frankofońskich państw afrykańskich, takich jak Benin, Dżibuti, Wybrzeże Kości Słoniowej czy Republika Kongo. Szczególna uwaga została poświęcona wewnętrznej strukturze władzy wykonawczej (występowanie premiera jako odrębnego organu), jak również recepcji różnych mechanizmów parlamentaryzmu zrationalizowanego ustanowionych uprzednio w konstytucji V Republiki Francuskiej. Uwzględniona została również dynamika zmian konstytucyjnych prowadząca do przyjmowania, w państwach takich jak Niger czy Senegal, prezydencjalizmu w miejsce semiprezydencjalizmu i odwrotnie. Na podstawie dokonanych ustaleń, można stwierdzić, że specyficzne właściwości prezydencjalizmu w Afryce frankofońskiej dowodzą jego ewidentnej odmienności od niektórych typowych założeń tego modelu.

**I.**

The system of government, defined as structures of the legislative and executive powers as well as the relationship between the two branches, belongs to one of the most important matters regulated, in more or less detail, in each basic law. Its specificity in a given country depends on many factors, including earlier constitutional traditions and the impact of constitutional designs adopted elsewhere. It is beyond discussion that in the states born as a result of the collapse of colonial empires, constitutional regulations in the former metropole have remained a constant point of reference. Taking into consideration specific political contexts in such countries, it is not surprising that the borrowing of institutional patterns has become a common phenomenon. However, the degree to which such reception takes place may vary widely. Regarding the system of government, the example of Francophone Africa illustrates this diversity. Since the beginning of the transitional period following the adoption of the French constitution of 1958, the states previously be-

longing to the French colonial empire have adopted various constitutional mechanisms based on three basic models: parliamentarianism, presidentialism and semi-presidentialism. The latter has been constructed directly on the basis of the French experience of the Fifth Republic. Currently, it may be considered a dominant one in Francophone Africa. In turn, a parliamentary system was a point of reference even before gaining full independence (mostly in 1960), but later it has lost its importance. This cannot be said about presidentialism which seems to be – from today's point of view – a model of practical significance<sup>2</sup>. Most importantly, it may be regarded as a real alternative to a semi-presidential construction.

It should be noted that a presidential regime was quite popular prior to the beginning of the democratisation process in the early 1990s, but still some Francophone African countries adopt its most important assumptions. The specificity of this system, however, is that it cannot be linked directly to its US counterpart. This is due to the fact that even in this case the impact of French constitutional designs remains clearly visible. Thus, the Francophone version of presidentialism can be regarded as a product of the synthesis of various constitutional solutions. Although its structure is based on a presidential construction (the responsibility of ministers only before the head of state), it has not been adopted in a pure form. However, it cannot be argued that presidentialism has been subjected to the process of parliamentarisation comparable with that concerning systems of government introduced in some South American countries<sup>3</sup>. Hence, undisputed resignations from a classic presiden-

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<sup>2</sup> At the beginning of the 1960s, presidentialism became a dominant constitutional construction in this part of the world. For this reason, systems based on parliamentary responsibility of the executive could be regarded as exceptions that proved the rule. D.G. Lavroff, *Les systèmes constitutionnels en Afrique noire. Les États francophones*, Paris 1976, pp. 21–25.

<sup>3</sup> A parliamentarised version of presidentialism can be found in the countries such as Argentina, Peru and Venezuela. In addition to the existence of the head of government, which functions in the executive branch next to the president, the mechanisms that have been introduced in the aforementioned states are based on the ability of parliaments to influence the political composition of cabinets. Even if constitutional requirements are quite difficult to meet in this respect, this is a sign of pro-parliamentary tinge of some presidential systems in this part of the world. That is why they are even included in hybrid regimes defined as structures in which prime ministers and cabinets are subject to parliamentary confidence. J.M. Carey, *Presidential versus Parliamentary Government*, [in:] *Handbook of New Institutional Economics*, eds. C. Ménard, M.M. Shirley, Berlin–Heidelberg 2008, pp. 92–93, 95–96.

tial model in no. way brings such African regimes to semi-presidential ones. Anyway, two issues require particular attention. These are the introduction of the prime minister into presidentialism as well as the adoption of some mechanisms of rationalised parliamentarianism and their incorporation into the architecture based on French constitutional designs applied after 1958.

Points of reference for this research will be current and former presidential constitutions of countries such as Benin (the basic law of 1990)<sup>4</sup>, Djibouti (the constitution adopted in 1992 and largely amended in 2010)<sup>5</sup>, Ivory Coast (the basic laws of 2000 and 2016)<sup>6</sup> and the Republic of Congo (the constitution of 2002<sup>7</sup> replaced, after thirteen years, by a new semi-presidential basic law). It should be borne in mind, however, that a departure from semi-presidentialism in order to introduce a presidential regime can also be seen in some other Francophone African states, but such modifications do not usually produce long-lasting effects. The best example of such dynamics is Niger, where the system of government has been, during the past thirty years, repeatedly changed from a semi-presidential to a presidential one and vice versa (presidential constitutions were adopted in 1996 and 2009<sup>8</sup>). Similar transformations have occurred in Senegal. Quite frequent regime chang-

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<sup>4</sup> Loi n° 90-32 du 11 décembre 1990 portant Constitution de la République du Bénin, <http://www.cour-constitutionnelle-benin.org/lacourpresent/decrets/Constitution.pdf> (7.09.2017).

<sup>5</sup> La Constitution du 15 septembre 1992; Loi Constitutionnelle n° 92/AN/10/6ème L portant révision de la Constitution, <http://www.presidence.dj/TexteFond.php> (9.09.2017). It is worth noting that Djibouti gained independence only in 1977, seventeen years later than most African countries previously constituting French overseas possessions in Africa. Before that, this part of the former colonial empire of France had been called the French Territory of the Afars and the Issas (*Territoire français des Afars et des Issas*). S. El Mansour Cerkaoui, *Djibouti*, [in:] *Historical Dictionary of European Imperialism*, ed. J.S. Olson, New York–Westport–London 1991, pp. 175–176.

<sup>6</sup> Loi n° 2000-513 du 1<sup>er</sup> août 2000 portant Constitution de la Côte d’Ivoire, [http://www.assnat.ci/assembleenationale/IMG/pdf/loi\\_n\\_2000-513\\_du\\_1er\\_aout\\_2000.pdf](http://www.assnat.ci/assembleenationale/IMG/pdf/loi_n_2000-513_du_1er_aout_2000.pdf) (7.09.2017); Loi n° 2016-886 du 8 novembre 2016 portant Constitution de la République de Côte d’Ivoire, <http://extwprlegs1.fao.org/docs/pdf/ivc160760.pdf> (9.09.2017).

<sup>7</sup> Constitution de la République du Congo du 20 janvier 2002, <http://cour-constitutionnelle.cg/docs/constitution-congolaise.pdf> (7.09.2017).

<sup>8</sup> Constitution de la IV<sup>ème</sup> République, [http://www.cour-constitutionnelle-niger.org/documents/constitution\\_4eme\\_rep.pdf](http://www.cour-constitutionnelle-niger.org/documents/constitution_4eme_rep.pdf) (7.09.2017); Constitution de la VI<sup>ème</sup> République, [http://www.cour-constitutionnelle-niger.org/documents/031\\_tf\\_txt\\_constitution\\_5eme\\_rep.pdf](http://www.cour-constitutionnelle-niger.org/documents/031_tf_txt_constitution_5eme_rep.pdf) (7.09.2017).

es began within a few years after gaining independence in 1960 and took place over longer periods of time (until the enactment, at the beginning of the new millennium, the current semi-presidential basic law of 2001). Even if presidential regimes existing in the aforementioned countries after the commencement of the first democratic reforms were rather short-lived (especially in the case of Niger between 1996–1999 and 2009–2010) and have been ultimately rejected, their respective basic laws should also be taken into account. Dynamic institutional reforms show clearly that there still exists a strong tension between presidential architectures and their semi-presidential counterparts. Hence, a discussion on which of these two models has more advantages and seems to be better for Francophone countries in Africa cannot be considered complete.

## II.

One of distinguishing features of presidential systems in Francophone Africa is a design of the executive branch of government composed of the prime minister functioning next to the head of state. The aforementioned structural factor can be seen, among others, in Djibouti. In the light of the 1992 basic law, the executive power belongs exclusively to the president of the Republic who has also been given the role of the head of government (Art. 21). The regulation clearly indicates that the executive power is fully subordinated to the head of state elected by universal suffrage<sup>9</sup>. Thus, it is difficult to assume that in the African countries under discussion a real duality of the executive branch have been introduced. The dualism is visible only from a structural perspective, whereas the functional criterion does not give grounds for drawing such a conclusion. In Djibouti, the principle according to which all executive power rests in the hands of the head of state is confirmed by Art. 41. This provision states that the president is supported (*est assisté*) by the government composed of the prime minister and other ministers. As a result,

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<sup>9</sup> Because of the adoption of presidential or semi-presidential systems, universal elections are a typical mechanism of taking over the presidency in Francophone Africa. The absolute majority system, where two rounds of voting usually occur, is most commonly used. I.M. Fall, *Le pouvoir exécutif dans le constitutionnalisme des États d'Afrique*, Paris 2008, pp. 69–78.

a limited role of the prime minister comes down to animating and coordinating government activity. Such a function was explicitly attributed to it in the 2000 constitution of Ivory Coast, while the president remained the sole holder of the executive power (*détenteur exclusif du pouvoir exécutif*) (Art. 41). Although the prime minister, not the president, was named the head of government, the constitutional role of the so-constructed cabinet consists in assisting the president and advising him in the process of governance. The current Ivorian constitution of 2016 repeats these regulations. According to its Art. 81, the task of the government is to implement the policy of the nation (*la politique de la Nation*) as defined by the president. The supportive positioning of the government corresponds to the role of the head of state as an organ that not only determines but also conducts the state policy (for example, Art. 54 of the 1990 constitution of Benin). Consequently, the cabinet autonomy perceived through the prism of the ability to determine the political line within a given range, has no reason to exist<sup>10</sup> (understandably, a stronger position of the government in this respect occurs in those states that have adopted a semi-presidential model, although even in this case, the presidency is, most often, much more powerful than in the light of the 1958 constitution of France<sup>11</sup>). This means that the prime minister and other ministers are only ancillary to the head of state. The latter is able to revoke them at any time, thus without having to meet any preconditions (such as a prior voluntary resignation of the prime minister without which the dismissal would not bring any effects<sup>12</sup>).

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<sup>10</sup> As P. Danho Nandjui noted, unlike in France, the prime minister has no reserved domain in relation to the head of state. P. Danho Nandjui, *La prééminence constitutionnelle du Président de la République en Côte d'Ivoire*, Paris–Budapest–Torino 2004, p. 42.

<sup>11</sup> For this reason, African semi-presidentialism is located, in terms of its constitutional regulation, between the French semi-presidential model and a typical presidential one. For more on this topic see: Ł. Jakubiak, *Semiprezycjonalizm we frankofońskich państwach Afryki Subsaharyjskiej*, [in:] *Systemy rządów w perspektywie porównawczej*, ed. J. Szymanek, Warszawa 2014, pp. 332–340.

<sup>12</sup> It is characteristic of France, where – formally speaking – the head of state cannot dismiss the prime minister without the consent of the latter. Such a requirement is regulated in Art. 8 of the 1958 constitution, although in practice its significance emerged only after the occurrence of cohabitation in the mid-1980s. For more on this topic see: M.A. Cohendet, *Le président de la République*, Paris 2002, pp. 58–60.

It leads to the conclusion that the cabinet does not enjoy the autonomy typical of a parliamentary model, nor even the partial autonomy that, in a semi-presidential system, may derive from the partisan composition of the legislative body (at least in the conditions of cohabitation, when the president loses some of the instruments to influence the government). In turn, under presidentialism, parliamentary majorities have no impact on the existence and functioning of the cabinet. The latter body is dependent solely on the head of state, which decides on appointments to government positions. It should be emphasized that the analysed constitutions do not contain any solutions which could suggest that there is a relationship between the political structure of cabinets and parliamentary majorities created after each legislative elections. Therefore, the regimes cannot be classified as semi-presidential ones. According to the restrictive principles of a pure presidential model, parliaments in the Francophone African states that have adopted this system of government have no constitutional tools that would allow them to influence the composition of cabinets. However, even the aforementioned formalisation of the government as a separate body proves, despite the lack of its political connections with the legislature, that presidentialism in these countries is to some degree modified against the US model. On the other hand, it must be stressed that such constitutionalisation of the government headed by the prime minister is not a construction from which there are no exceptions. A fully monistic structure of the executive power within a presidential model was foreseen in the Congolese basic law of 2002. This act contained regulations applicable to the president, ministers and the Council of Ministers. The term 'government' was used sporadically and most often concerned all the executive power led by the president. The latter was explicitly referred to as the head of the executive branch (*le chef de l'exécutif*) and the head of government (*le chef du gouvernement*) (Art. 56). A similar approach has been applied in the 1990 constitution of Benin, though the prime minister began to function as a non-constitutional body (however, the post has been finally abolished)<sup>13</sup>.

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<sup>13</sup> It is worth mentioning that frequent changes concerning the very existence of the prime minister as a political institution built into the structure of the executive power belong to specific features of this country. Taking into account the period since the beginning of the 1990s, this post has been established and liquidated several times. Currently, under the presidential government, it does not exist. This is due to the fact that directly after the presidential



Consequently, the very existence of the prime minister, which is not equipped with significant competencies, does not affect the scope of presidential powers<sup>14</sup>. In particular, such a structure of the executive branch (and, above all, a clear hierarchy within it) implies that the requirement for countersignature concerning presidential acts would have no specific justification<sup>15</sup>. It should be stressed that the countries under discussion have adopted a rather typical structure of presidential powers, although attention should be paid to the fact that many of them were taken directly from the semi-presidential architecture of the Fifth Republic. For example, presidents may exercise extraordinary powers in the event of a threat to the state and its institutions, which have been modelled on Art. 16 of the 1958 constitution<sup>16</sup>. More or less visible similarities occur in the case of such competencies as presiding the meetings

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elections of 2016, Patrice Talon, the newly-elected head of state, decided not to institutionalise the prime minister any longer. Five years earlier, such a solution had been introduced (however, without amending any provisions of the basic law) by his predecessor Thomas Boni Yayi. V. Duhem, *Bénin: Patrice Talon nommé un gouvernement sans Premier ministre*, 07.04.2016, <http://www.jeuneafrique.com/316256/politique/benin-patrice-talon-nomme-gouvernement-premier-ministre> (21.09.2017).

<sup>14</sup> By the way, the same refers to the institution of the vice president which is not foreign to constitutionalism in Francophone Africa. As for the constitutional regulations in force, such a body can be found in the 2016 basic law of Ivory Coast. In the light of its Art. 80, the vice president acts on the basis of a presidential delegation. Moreover, the constitution states that the vice president can chair the Council of Ministers when the head of state is absent.

<sup>15</sup> The logic of countersignature, however, is in line with parliamentarianism and, at least to some extent, semi-presidentialism. Under the conditions of a pure parliamentary system, in which all or most of the presidential powers require countersignature, this contributes to ensuring, at least in principle, political neutrality of the head of state. In a semi-presidential model based on a dualistic version of parliamentarianism, in which the position of the head of state is considerably stronger than in a monistic one, the countersignature exists but its scope is significantly limited. Its role is mainly to provide coordination of activities that are taken inside a complex structure of the executive composed of two strong and autonomous political actors. The importance of countersignature as a tool to restrict the position of the head of state grows only in the course of cohabitation. For more on this topic on the example of France from the Third to the Fifth Republic see: B. Branchet, *Contribution à l'étude de la Constitution de 1958. Le contresigne et le régime politique de la V<sup>e</sup> République*, Paris 1996, pp. 34–41.

<sup>16</sup> For more on this topic see: Ł. Jakubiak, *Artykuł 16 Konstytucji V Republiki Francuskiej jako wzorzec regulacji instytucji stanu nadzwyczajnego w państwach Afryki frankofońskiej*, [in:] *Stan nadzwyczajny. Analizy z perspektywy nauk politycznych i prawnych*, eds. J. Markiewicz-Stanny, P. Łukomski, Zielona Góra 2015, pp. 261–277.



of the Council of Ministers, conducting nationwide referendums or participating in the procedure of introducing constitutional amendments. On the other hand, there are also noticeable differences that arise either from the structure of presidentialism itself or from the specificity of its reception in Francophone Africa. The inability of the head of state to dissolve the parliament may be taken into account in this context<sup>17</sup>. Besides, the president is also referred to as the head of administration (for example, Art. 67 of the 2016 constitution of Ivory Coast). Such regulations should be seen through the prism of the hierarchy within the whole executive branch. Attention should also be paid to delivering messages to the parliament as a competence that has been built according to a different scheme than in the French basic law of the Fifth Republic. For example, such a specific construction was regulated in Art. 61 of the Nigerien constitution of 1996. On the basis of this provision, the president had to deliver, before the first chamber, a state of the state message every year, on the anniversary of taking over the presidency.

### III.

The process of rationalising the system of government is commonly associated with a parliamentary model, in which the cabinet composed of the prime minister and other ministers is politically responsible before the legislature. Under such conditions, the rationalisation serves primarily to balance the position of the parliament and the government by limiting the former and strengthening the latter. The purpose of such activities is to provide political stabilisation by preventing unusually frequent government crises<sup>18</sup>.

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<sup>17</sup> However, it is worth pointing to the change of the Senegalese constitution, which took place in 1967. The structure of presidentialism was supplemented by the presidential competence to dissolve the National Assembly without the simultaneous introduction of a motion of censure as a counterbalancing factor. Ł. Jakubiak, *System ustrojowy Senegalu*, Kraków 2014, pp. 26–27.

<sup>18</sup> This kind of dysfunctionality of parliamentarianism is characteristic of its monistic version (this variant had existed before the process of rationalisation began in the mid-twentieth century), in which the parliament *de facto* dominates both segments of the executive power. J. Gicquel, J.-É. Gicquel, *Droit constitutionnel et institutions politiques*, Issy-les-Moulineaux 2015, pp. 161. Under such conditions, the position of the head of state is far reduced. It can be said that the body becomes only a neutral political observer. This makes – despite formal

Under rationalised parliamentarianism, the cabinet should have a consistent and predictable majority in the chamber (or chambers) of parliament, which is capable of overthrowing the government by passing a motion of censure (however, such a possibility has to be more or less restricted by constitutional provisions). It deserves highlighting that various instruments of rationalised parliamentarianism exist in a semi-presidential model, which should be considered as an outcome of the most far-reaching rationalising activities. In turn, it is not possible to apply such rationalisation to a presidential model. On the other hand, not all the mechanisms for limiting the role of the legislative branch are based on the relationship between the executive and the parliament. This means that at least some of them can be successfully incorporated into structures of other systems of government, including those that are not linked to a parliamentary one. The latter concerns different varieties of presidentialism. Regardless of their detailed construction, each of them can adapt those rationalising solutions which do not require the existence of the principle of responsibility of the government before a legislative body. The essence of the problem is the rationalisation which affects not parliamentarianism seen through the prism of the system of government (because it is not the case), but solely the parliament as one of the state organs.

As indicated above, as for specific presidential regimes adopted in former French colonies in Africa, the concept of rationalised parliamentarianism cannot refer to the relationship between the executive and legislative because such links have not been based on the principle of parliamentary responsibility of the cabinet. Hence, particular attention should be paid to some other components of rationalisation, including the scope and conduct of legislative proceedings. The mechanisms that have been introduced in this area can be regarded as a common denominator of all systems of government in the African states that emerged after the collapse of the French colonial empire<sup>19</sup>.

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duality of the executive branch – the whole executive power to be in the hands of the government headed by the prime minister. However, the status of the latter does not necessarily lead to the strengthening of its position *vis-à-vis* other ministers. Such parliamentarianism is also described as absolute one (*parlementarisme absolu*). For more on this topic see: D. Turpin, *Le régime parlementaire*, Paris 1997, pp. 54–62.

<sup>19</sup> However, not all constitutional instruments based on the concept of rationalised parliamentarianism can be found in French constitutionalism. Taking into consideration the constitutions in the Francophone Africa that were adopted after the creation of the French

In this respect, the regulations contained in the constitution of the Fifth Republic have been a universal point of reference. From this perspective, at least some fundamental differences between parliamentarianism, semi-presidentialism and presidentialism do not matter much. Anyway, specific constitutional solutions of this kind have an indirect influence on the relationship between the executive and legislative irrespective of the system of government chosen by the creators of one or another constitutional order. Suffice it to say that the restrictions imposed on the parliament affect its position vis-à-vis the executive even if their aim is not to protect the cabinet threatened by an opposing parliamentary majority capable of overthrowing it. Although the latter possibility does not exist within a presidential model, such rationalising measures have a visible impact on the position of major political institutions, in particular providing further means to maintain actual superiority of the executive over the uni- or bicameral legislature.

In the case of systems of government of Francophone Africa, attention should be drawn principally to the constitutional limitation of the extent to which the parliament exercises its legislative function. Just like in France, setting a strict framework for this leads to a clear strengthening of the executive. Such powers of the latter branch are therefore presumed, while the scope of legislative activity of the parliament is directly defined in the constitution. For example, in the light of the 2016 constitution of Ivory Coast, legislative powers of the bicameral parliament (composed of the National Assembly and the Senate) are – as in the case of the 1958 basic law of France – enumerated (Art. 101). As for other areas, which are not clearly listed, legal acts placed at the legislative level can be issued by the executive (Art. 103). This constitutes a so-called regulatory authority (*pouvoir réglementaire*). It should be noted that the issuance of such provisions is the responsibility of the head of state (Art. 65). Besides, the president has the ability to create ordinances

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Community (*Communauté française*) in 1958 but before gaining independence, it deserves to be highlighted that some of them introduced a constructive vote of no confidence as a mechanism for rationalisation of parliamentarianism taken from Germany (the 1949 constitution). Hence, Gérard Conac states that, in terms of rationalisation, some of the then basic laws went even further than the constitution of the Fifth Republic of France. G. Conac, *L'évolution constitutionnelle des États francophones d'Afrique Noire et de la République Démocratique Malgache*, [in:] *Les institutions constitutionnelles des États d'Afrique francophone et de la République Malgache*, ed. idem, Paris 1979, pp. 42.

(*ordonnances*) in the fields that are normally regulated within the legislative (Art. 106). A prior consent of the legislature for the presidential activity of this kind is required. This is understandable because the presidential power serves to further restrict the position of the parliament in the whole law-making process. It needs to be emphasized that the above-mentioned division of powers between the executive and legislative has been based on the mechanism employed by the authors of the constitution of the French Fifth Republic, but there is one significant difference. It comes down to the body, which is responsible for issuing such legal acts. In the presidential systems under consideration this power belongs to the head of state and not to the government. Unlike semi-presidentialism based on the bicephalous structure of the executive branch, in a presidential model in which the cabinet remains politically dependent on the president and responsible solely before him, such strengthening of the cabinet would contradict the conception of the executive power, according to which the function of the government should be limited to assisting the head of state.

Another manifestation of the reinforcement of the executive at the expense of the legislature is the very conduct of legislative proceedings within the bicameral parliament. For example, appropriate mechanisms based on the idea of rationalisation have been regulated in the aforementioned 2016 constitution of Ivory Coast, in which a unicameral structure of the parliament has been replaced by a bicameral one. Thanks to this, some French constitutional patterns taken directly from the constitution of the Fifth Republic could be adopted. It is a model of a relatively strong second chamber which additionally assumes a constant interference of the executive with the relations between both segments of the legislative power. As in the case of ordinances, it is the president who has been given the opportunity to decide on the course of legislative activity of the parliament. First, in the event of a conflict between the National Assembly and the Senate, the head of state may order the establishment of a mixed parity committee (*commission mixte paritaire*) composed of parliamentarians belonging to one or other chambers. The text which was agreed by the committee could then be put to the vote in both of them. The decision in this regard is taken by the president. Moreover, if there is no agreement between the chambers, the head of state may decide that the second chamber is excluded from further legislative

proceedings. In such a situation, the final decision on a given text is taken exclusively by the National Assembly (Art. 110). Undoubtedly, the activities in the triangle composed of the president and both segments of the legislature are a copy of the procedure of the last word (*dernier mot*) granted to the first chamber, which is known from French Fifth Republic. A striking difference consists, however, in replacing the government and the prime minister by the head of state.

Thus, in the case of presidential regimes in Francophone Africa, it is the president who is able to make use of this kind of controlled bicameralism. As in the case of the regulatory authority mentioned above, the government, as a body assisting the head of state, plays no remarkable role in this area. It deserves to be highlighted that the president has even the right to initiate legislation. This is yet another proof that in the discussed group of states the introduction of mechanisms that have been operating within the Fifth Republic for several decades has been modified in order to further strengthen the constitutional status of the head of state. This indicates that rationalised parliamentarianism do not necessarily mean that the beneficiary of such actions is the government composed of the prime minister and other ministers. Since the president is the exclusive holder of the executive power, there is no reason for this organ to be deprived the right to actively participate in various aspects of a broadly understood law-making process<sup>20</sup>. On the other hand, it must be borne in mind that the condition *sine qua non* of the reception of some of the aforementioned tools is a bicameral structure of the legislature.

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<sup>20</sup> The reinforcement of the presidency in this area, as compared to French constitutional standards, also occurs in some of semi-presidential systems that have been introduced in former French dependent territories. This is understandable because semi-presidentialism in Africa creates, in general, much more favourable conditions for strong presidential power than its French counterpart. This results not only from the aforementioned strong position of the president in the legislative procedure, but above all from the principle of dual responsibility of the government (not exclusively before the legislature but also before the head of state) which is usually formally expressed in appropriate constitutional acts. Such a structure of links between both branches means that in the event of a conflict between the head of state and a parliamentary majority, the actual presidential power is weaker, but this weakening does not go too far. Thus, it does not result in the loss of a strong position that has been constitutionally guaranteed. G. Conac, *Semi-Presidentialism in a Francophone Context*, [in:] *Semi-Presidentialism Outside Europe. A Comparative Study*, eds. R. Elgie, S. Moestrup, London–New York 2007, p. 88.

Otherwise, the construction of rationalised parliamentarianism may include only those instruments that do not require a concrete structure of the legislative branch. Apart from the 2016 constitution of Ivory Coast, bicameralism was foreseen in the 2002 constitution of Congo. According to the act, the National Assembly and the Senate exercised the legislative power. It should be stressed, however, that a new semi-presidential basic law of this country, enacted in 2015, has not departed from this model. As for unicameralism, this is the case of Ivory Coast (before the entry into force of the 2016 constitution), Benin (according to Art. 79 of the 1990 constitution the parliament is composed of the National Assembly) or Djibouti (a single chamber has been adopted in Art. 44 of the 1992 basic law)<sup>21</sup>.

#### IV.

The reasons for which presidential systems in some Francophone African states have been introduced (or were introduced in the past) deserves special consideration. The dynamics of constitutional reforms in some of the states under discussion indicates that today the basic dilemma is the choice between semi-presidentialism modelled on the constitution of the French Fifth Republic and the above-described presidential architecture in its modified form. The best example of frequent changes in this area is Niger. After the beginning of the democratisation process in the early 1990s, the rejection of a semi-presidential model in order to introduce presidentialism took place twice, in 1996 and 2009. The causes for this modification were not the same. In the mid-nineties, there was the phenomenon of cohabitation, similar to what had occurred in France before. A deep conflict between the president and the prime minister from different political camps

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<sup>21</sup> For more on unicameralism and bicameralism in Francophone Africa see: A. Cabanis, M.L. Martin, *Les constitutions d'Afrique francophone. Évolutions récentes*, Paris 1999, pp. 113–125. It is worth emphasizing that in African states previously belonging to the French empire (regardless of whether they have introduced a presidential system or a semi-presidential one), a bicameral construction of the legislative power has not been commonly adopted. In some countries, the legislative structure is subject to certain modifications (for example, the creation of the Senate in Ivory Coast as a result of the enactment of the 2016 basic law or the abolition of the body in Senegal at the beginning of Macky Sall's presidency).

lasted nearly a year and ended in an undemocratic way – a military coup<sup>22</sup>. After the takeover of power, new military authorities decided to abolish the duality of the executive branch and to depart from the principle of its political responsibility before the parliament. Such a step resulted in the restoration of a presidential regime. Under new constitutional conditions, re-occurrence of cohabitation was not possible. After three years, the return to civilian rule led to the adoption of another semi-presidential constitution, which, however, contained specific ‘safety valves’ – innovative regulations on a new division of powers within the executive in the event of cohabitation (it was less favourable for the head of state than in normal conditions). Similar provisions to be applied during such a political conflict have also been adopted in the 2010 constitution. However, political configurations created after presidential or parliamentary elections have never led to the emergence of a politically heterogeneous executive power.

The introduction or reintroduction of presidentialism may also take place in a different political context. In such a situation, the aim is not (or not exclusively) to verify the functioning of the systems generating concrete constitutional problems because of conflicts within the internally divided executive controlled by opposing camps, but mainly to seek to expand the scope of presidential powers. Such a scenario may be implemented in various political situations, also when the head of state wants to strengthen its actual position because some disagreements within the ruling camp emerge. The latter situation occurred in Senegal after a few years that had passed since gaining independence from France. The attempts of the then prime minister Mamadou Dia to reinforce his political status ended with a reaction of president Léopold Sédar Senghor who decided to significantly amend the existing constitution in order to strengthen the presidency. After a dozen or so weeks, a completely new basic law was adopted. Its specific provisions were prepared with a view to the principles of a presidential model<sup>23</sup>. In this way, Senegal joined the countries that introduced this system of government immediately after they had become independent, such as Ivory Coast, Niger or Upper Volta (today’s Burkina Faso). However, the first Senegalese experience with

<sup>22</sup> S. Moestrup, *Semi-Presidentialism in Niger. Gridlock and Democratic Breakdown – Learning From Past Mistakes*, [in:] *Semi-Presidentialism Outside...*, pp. 114–115.

<sup>23</sup> D.G. Lavroff, *La République du Sénégal*, Paris 1966, pp. 47–60.



this model was relatively short (it lasted until 1970)<sup>24</sup>. In view of the above, it can be said that in some respects, the circumstances of the transition to presidentialism were similar to what happened in Niger in 1996. In both cases the background was a conflict within the executive branch, but in the latter country it occurred between two different camps, not within one ruling political party. It should also be highlighted that in Senegal, the introduction of a presidential system led to the reinforcement of the position of the then incumbent president, while in Niger it resulted from the overthrow of the head of state. Besides, a military coup may also serve to defend semi-presidentialism. In 2009, President Mamadou Tandja conducted a constitutional referendum and reintroduced in Niger a presidential system<sup>25</sup>. However, this attempt did not bring long-term results. The president lost his office a few months later and a semi-presidential architecture was then restored.

## V.

The presented analysis of systems of government in the states created in the aftermath of the fall of the French colonial empire, which continue to apply or previously applied mechanisms typical of presidentialism, shows that this model represents the most important alternative to the semi-presidential regime taken directly from the 1958 constitution of France. A parliamentary model, in which the position of the president is significantly reduced, does not constitute an important point of reference in the African context. It should be emphasized that the adoption of a presidential model by some former French colonies does not mean that there has been no reception of many constitutional mechanisms solutions known in the former metropole. Hence, in terms

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<sup>24</sup> A pure presidential system was restored in the early 1980s, after taking over the presidency by Abdou Diouf. F. Zuccarelli, *La vie politique sénégalaise (1940–1988)*, Paris 1988, p. 170. For more on the adoption of a presidential model in Senegal and some other regime changes in this country after receiving independence from France see: S.M. Sy, *Les régimes politiques sénégalais de l'indépendance à l'alternance politique 1960–2008*, Yaoundé–Paris–Dakar 2009, pp. 43–158. Ł. Jakubiak, *Dynamika przekształceń konstytucyjnego modelu rządów w Republice Senegal*, [in:] *Aktualne problemy reform konstytucyjnych*, ed. S. Bożyk, Białystok 2013, pp. 613–629.

<sup>25</sup> S. Moestrup, *Semi-Presidentialism in Africa. Patterns and Trends*, [in:] *Semi-Presidentialism and Democracy*, eds. R. Elgie, S. Moestrup, Y.S. Wu, Basingstoke 2011, pp. 147–148.

of the wording of concrete regulations contained in basic laws, there is a lot of convergence between presidential and semi-presidential systems in Francophone Africa. Differences concern basically the most important structural constructions such as the inability of the president to dissolve the legislature or the inability of the latter body to overthrow the government<sup>26</sup>. On the other hand, these essential structural components indicate that presidentialism in Francophone Africa is a construct substantially different from semi-presidential designs that had been previously adopted in the Fifth Republic. The most important is the principle of parliamentary responsibility of ministers, without regard to which any system of government cannot be identified as a semi-presidential one. The principle designates, as part of a parliamentary regime, the key element of every variant of semi-presidentialism. This also applies to the formula of the aforementioned model which remains highly presidentialised, being similar to presidentialism itself. It is also worth mentioning that these similarities can be seen primarily in the political practice. Its distinctive feature is that in both cases the head of state dominates the political system without encountering any major institutional constraints. This effect is related to the political structure of parliaments in which presidential parties (political formations whose actual leaders are presidents and whose main task is to support the implementation of the presidential electoral programme) hold, most often, a stable majority. This results in the fact that formal rules are not essential, which leads to the blurring of differences between presidentialism and semi-presidentialism. In short, regardless of the system of government, the practice favours a strong presidency that is guaranteed at both constitutional and political level. The formal institutional structure is not important enough to significantly change that.

Regardless of whether presidentialism or semi-presidentialism has been adopted in a particular state, the links to French constitutionalism are still clearly visible, although in the case of presidential systems some initial constitutional solutions have been modified to a greater extent. This includes, inter alia, the application of mechanisms based on rationalised parliamentarianism in the course of legislative proceedings within bicameral legislatures.

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<sup>26</sup> For more on this topic on the example of presidentialism in Ivory Coast and semi-presidentialism in Senegal see: Ł. Jakubiak, *The Systems of Government of Senegal and Ivory Coast. Comparative Analysis*, "Politeja" 2016, vol. 42, no. 3, pp. 247–261.

The structure of relatively asymmetric bicameralism consisting in the possibility to neutralise (as a result of decisions taken by the executive) the second chamber during the parliamentary work on a bill has been introduced without major changes. However, monism of the executive branch of government, which remains fully subordinate to the president, implies, however, that the head of state can also exert a permanent impact on the process of creating legislation. Conversely, in the case of semi-presidential systems in most Francophone African countries this kind of enhancement of presidency is not excluded (as evidenced by the Senegalese constitution of 2001), but it is not a natural consequence of this system of government. If this is the case, it is legitimate to believe that a more or less presidentialised version of semi-presidentialism has been adopted in a given country. In addition to dual responsibility of the government, the active participation of the head of state in the lawmaking process is then noticeable. The president is then able to interfere with such proceedings. Otherwise, the head of state could exert such influence only indirectly, that is through the cabinet.

It must also be borne in mind that the very existence of the post of the prime minister as the head of government, which is fully dependent on the head of state and politically irresponsible to the parliament, is not the feature that distinguished or still distinguishes all presidential systems in former French colonies. Before 2016, a specific construction could be found in Benin, that is the establishment of the prime minister outside the provisions of the constitution. Regardless of the form of inclusion of the institution to the structure of presidentialism, it is difficult to treat its introduction as a significant modification of this system of government. It is surely not sufficient to say that it leads to a pro-parliamentary tinge of these presidential systems. The most important element of this model, that is the lack of political responsibility of the cabinet before the parliament, remains intact. As a consequence, there is no reason to state the existence of parliamentarised variant of presidentialism, which would somehow resemble a similar formula occurring in presidential systems adopted in South America. This is also proved by other mechanisms and institutions (or the absence thereof), such as the aforementioned presidential inability to dissolve the parliament or a ban on exercising ministerial functions for members of parliament. On the other hand, there are some breaches in the finally adopted design of presidentialism that

violate the principle of strict separation of all three authorities. Such an exception is the presidential legislative initiative which, however, fits into active participation of the head of state in a broadly understood law-making process.

Moreover, the presidential systems under discussion deserve some attention because of their political importance as remarkable remedies to revealed disadvantages of semi-presidentialism. The most serious problem that arises in here is a possible violent conflict within the executive branch, which in the worst case can lead to a complete paralysis of the governance structures. On the other hand, political practice in many countries has shown that the consequence of applying such a configuration is not a very likely scenario<sup>27</sup>. Anyway, a departure from semi-presidentialism can be seen as a form of further stabilisation of the whole system of government by eliminating potential risk factors. From this point of view, presidential systems in which the executive is not politically linked to the parliament, seem more predictable. It must be highlighted, however, that in the case of Francophone African states, the transition to presidentialism is sometimes conditioned by attempts to further strengthen the position of the head of state. This does not mean that the rejection of a semi-presidential model has become an obvious choice. On the contrary, this system of government still exists in a large number of former French colonies in Africa. It may even be concluded that, after the beginning of the democratisation process in the early 1990s, its significance has increased because the need to introduce more or less internally balanced executives was emphasized at that time<sup>28</sup>. However, this does not change the fact that although semi-presidentialism has its obvious weaknesses, pure presidentialism can also raise serious objections (for example, excessive concen-

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<sup>27</sup> Several factors influence this. The most important of them is the political composition of the parliament pointing to strong presidential parties. They often hold an absolute majority of votes in the chamber before which the cabinet bears political responsibility. This means that the presidential power is not threatened by the existence of a significant, unfavourable to the head of state, political force in the legislature.

<sup>28</sup> As a result, after the onset of the democratisation process in the early 1990s, monism of the executive power, in which the office of the prime minister does not occur at all, has become a rare institutional design. An overwhelming majority of former French colonies adopted the conception of the executive in which the president was accompanied by the government composed of the prime minister and other ministers. This does not mean, however, that the scope of presidential power has been significantly reduced. I.M. Fall, *op.cit.*, pp. 16–20.

tration of power in the hands of the head of state). Hence, reforms going in the opposite direction should not be surprising. The Republic of Congo may serve as an example of such evolution<sup>29</sup>. One of the most characteristic phenomena in the group of states under discussion is, undoubtedly, dynamics of constitutional changes covering relations between the legislative and executive, as well as the internal structure of the latter branch of government. Although the direction of such constitutional reforms in the analyzed countries is often very different, it is undisputed that presidentialism, embedded not only in fundamental theoretical requirements of this model, but also in concrete designs of contemporary French constitutionalism, is still a noteworthy proposal to be based on while constructing the most desired systemic solutions within a given institutional architecture.

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<sup>29</sup> As for the country, the introduction of a semi-presidential model, in which presidential powers are partially limited to the benefit of the government, was accompanied by some other important institutional reforms. It deserves to be emphasized that the position of the legislature was intended to be reinforced and the constitutional status of the parliamentary opposition had to be formally regulated. D. Sassou-Nguesso, *Congo: le dialogue national en faveur d'une réforme de la Constitution*, 18.07.2015, <http://www.rfi.fr/afrique/20150718-fin-dialogue-national-decision-reforme-constitution-avis-reactions> (26.09.2017).

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